The opinion in support of the decision being entered today was *not* written for publication and is *not* binding precedent of the Board.

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

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Ex parte BURTON H. POPPENGA, JAMES S. BOYCE,
and JON BAKER

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Appeal 2007-1102
Application 10/006,692
Technology Center 2100

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Decided: June 11, 2007

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Before LEE E. BARRETT, LANCE LEONARD BARRY, and JOHN A. JEFFERY, *Administrative Patent Judges*.

JEFFERY, *Administrative Patent Judge*.

DECISION ON APPEAL

Appellants appeal under 35 U.S.C. § 134 from the Examiner's rejection of claims 15-18 and 20-23.[1] We have jurisdiction under 35 U.S.C. § 6(b). We affirm.

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[1] Although all pending claims have been rejected, Appellants appeal only the rejection of claims 15-18 and 20-23 (Br. 1-2). Accordingly, only claims

STATEMENT OF THE CASE

Appellants invented a system and method for facilitating device driver installation in a customer environment. Specifically, information about a device for which a driver is to be installed on a computer is automatically accessed. Then, a driver is automatically selected, installed, and configured on the computer.[2] Claims 14 and 15 are illustrative:

14. A method for facilitating device driver installation, comprising:

assigning a discrete identification number to each of a plurality of devices installed in a customer environment;

associating information for configuring a driver for each of the devices installed in the customer environment with the identification number for the device; and

storing the identification numbers and associated configuration information together at a location remote from the customer environment and accessible to the customer environment.

15. The method of Claim 14, further comprising associating the identification numbers with the customer.

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claims 15-18 and 20-23 are before us. Appellants' argument on Page 3 of the Brief contending that the Examiner should have entered a proposed amendment after final rejection is a petitionable matter under 37 CFR 1.181 – not an appealable matter. *See* MPEP § 1002.02(c) (noting that petitions involving examiners' refusals to enter amendments are decided by Technology Center Directors). Because we do not have jurisdiction over this matter, it is therefore not before us. *See* MPEP § 706.01 ("[T]he Board will not hear or decide issues pertaining to objections and formal matters which are not properly before the Board."); *see also* MPEP § 1201 ("The Board will not ordinarily hear a question that should be decided by the Director on petition....").

[2] *See generally* Specification 3:20-30.

The Examiner relies on the following prior art reference to show unpatentability:

Chiloyan   US 2002/0083228 A1   Jun. 27, 2002
                                                    (filed Dec. 21, 2000)

Claims 15-18 and 20-23 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Chiloyan.

Rather than repeat the arguments of Appellants or the Examiner, we refer to the Briefs and the Answer for their respective details. In this decision, we have considered only those arguments actually made by Appellants. Arguments which Appellants could have made but chose not to make in the Briefs have not been considered and are deemed to be waived. *See* 37 C.F.R. § 41.37(c)(1)(vii).

The Examiner has indicated how the claimed invention is deemed to be fully met by the disclosure of Chiloyan (Answer 4; Final Rejection 2-6).[3] Regarding representative claim 15,[4] Appellants argue that Chiloyan does not disclose any association between the device identification numbers and the

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[3] We note that the Examiner's answer does not detail the Examiner's grounds of rejection with particularity, but merely indicates that claims 15-18 and 20-23 stand finally rejected (Answer 4). We presume that the Examiner intended to incorporate the grounds of rejection of these claims articulated in detail in the Final Rejection mailed May 4, 2005 in the Answer. We remind the Examiner, however, that such incorporations by reference are improper under current practice. *See* MPEP § 1207.02 ("An examiner's answer should not refer, either directly or indirectly, to any prior Office action without fully restating the point relied on in the answer."); *see also Ex parte Metcalf,* 67 USPQ2d 1633, 1635 n.1 (Bd. Pat. App. & Int. 2003).

[4] Appellants indicate that arguments pertaining to "Ground No. 2" apply to all appealed claims (Br. 4). Accordingly, we select claim 15 as representative. *See* 37 C.F.R. § 41.37(c)(1)(vii).

customer as claimed. According to Appellants, Chiloyan does not determine whether the individual customer has already installed the device, but rather whether the correct device driver is installed on a computer hosting the device. Appellants further argue that Chiloyan does not care which customer has the device or who is using it. In this regard, Appellants contend that Chiloyan has no way of knowing which devices are installed in a particular customer environment because device IDs are not associated with the customer.

Appellants acknowledge that downloading a driver to a computer necessarily involves identifying the computer's location. Appellants further acknowledge that someone uses the computer and device in Chiloyan, and the user and the customer may even be the same person. Appellants maintain, however, that this information does not constitute associating a device ID with the customer in whose environment the device is installed (Br. 4-5; Reply Br. 1-3).

The Examiner argues that Chiloyan determines two attributes of a particular customer based on the device IDs: (1) whether the device driver has been installed for that particular customer, and (2) whether an information access flag has been set for that particular customer. The Examiner further notes that the particular operator of the computer 20 and the device 56 is inherently associated with that particular device and its identification numbers (Answer 4-6).

Regarding claims 18 and 23,[5] Appellants argue that Chiloyan does not disclose storing (1) identification numbers and associated configuration

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[5] Appellants indicate that arguments pertaining to "Ground No. 3" apply to claims 18 and 23 (Br. 4). Accordingly, we select claim 18 as representative.

information in a first database, and (2) associated device drivers in a second database as claimed (Br. 5-6). The Examiner argues that a "database" is interpreted as "a file, table or other repository in which information is stored at some location." With this construction, the Examiner argues that Chiloyan discloses two such "databases" on the server that store ID numbers and associated configuration information distinct from the associated device drivers (Answer 6-7).

ISSUES

(1) Have Appellants established that the Examiner erred in finding that Chiloyan's system associates the identification numbers with the customer as recited in representative claim 15?

(2) Have Appellants established that the Examiner erred in finding that Chiloyan's system stores (1) identification numbers and associated configuration information in a first database, and (2) associated device drivers in a second database as recited in representative claim 18?

FINDINGS OF FACT

At the outset, we note that the Examiner's findings regarding the specific teachings of Chiloyan (Answer 4; Final Rejection 2-6) are not in dispute except with respect to the limitations noted above. (*See* Br. 3-6.) Accordingly, we will adopt the Examiner's factual findings regarding Chiloyan as they pertain to the undisputed claim limitations.

Chiloyan discloses a system for obtaining a driver for a peripheral device connected to a personal computer (PC).[6] When the user connects a peripheral device to USB I/O interface 46, the PC's operating system 35 detects and enumerates the newly-connected peripheral to extract a device descriptor from the peripheral. The device descriptor contains data fields relating to the peripheral including a vendor ID and a product ID. These IDs are then parsed from the device descriptor fields and used to determine the network address from which the peripheral's drivers can be obtained (Chiloyan, ¶¶ 0036-37; Figs. 1 and 2). To this end, the vendor ID and/or product ID can serve as indexes into a local or remote database to reference a network address related to the peripheral (Chiloyan, ¶¶ 0044-45). Using the obtained network address, the driver for the peripheral can then be downloaded from a remote device accessible at the network address (Chiloyan, ¶ 0041; Abstract).

PRINCIPLES OF LAW

Anticipation is established only when a single prior art reference discloses, expressly or under the principles of inherency, each and every element of a claimed invention as well as disclosing structure which is capable of performing the recited functional limitations. *RCA Corp. v. Applied Digital Data Systems, Inc.*, 730 F.2d 1440, 1444, 221 USPQ 385, 388 (Fed. Cir. 1984); *W.L. Gore and Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 1554, 220 USPQ 303, 313 (Fed. Cir. 1983).

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[6] PC 20 may operate in a networked environment such as that found in offices, intranets, etc. (Chiloyan, ¶¶ 0031-32).

ANALYSIS

Representative Claim 15

We will sustain the Examiner's anticipation rejection of representative claim 15. We note at the outset that the claim merely calls for "associating the identification numbers with the customer." In our view, the user of personal computer (PC) 20 in Chiloyan fully meets the "customer" as claimed giving the term "customer" its broadest reasonable interpretation.[7]

As the Findings of Fact indicate, the user in Chiloyan initiates the affirmative act of connecting the peripheral to the PC's I/O interface (Fig. 2; Step 61). This very act "associates" the peripheral -- and its associated identification numbers -- with the user giving the limitation its broadest reasonable interpretation.[8] Even if we assume, without deciding, that the peripheral could be utilized by different users, *this particular user* nonetheless initiates the process of installing drivers for *this particular peripheral*. In this sense, the user is "associated" with the peripheral and its associated identification numbers that are extracted to determine the appropriate network address. Since the user also fully meets the "customer" as claimed -- an interpretation that Appellants acknowledge[9] -- the

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[7] The term "customer" is defined, in pertinent part, as "a person or thing of a specified kind that one has to deal with." *See* Compact Oxford English Dictionary, *at* http://www.askoxford.com/concise_oed/customer?view=uk (last visited June 7, 2007).

[8] The term "associate" is defined, in pertinent part, as "to bring together or into relationship in any of various intangible ways...." *See* Merriam-Webster Online, *at* http://www.m-w.com/cgi-bin/dictionary?book=Dictionary&va=associate (last visited June 7, 2007).

[9] *See, e.g.*, Reply Br. 2 ("The user of any one or more of the multiple devices is completely irrelevant to the acts recited in Claim 15 *unless the user happens to also be the customer*....") (emphasis added).

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peripheral and its associated identification numbers in Chiloyan are therefore associated with the customer as claimed.

Appellants' argument that the user (i.e., the customer) would have to use all of the devices to associate the identification numbers assigned to the devices (Reply Br. 2-3) is unavailing. As we indicated previously, the very act of connecting the peripheral to the PC's interface to install the driver by extracting the peripheral's identification number inherently associates the peripheral and its associated identification number with that particular user. For every such peripheral installed in Chiloyan's system using this technique, the particular user (i.e., customer) would likewise be associated with the respective peripheral and associated identification number.

We add that the term "customer" is quite broad and is not only fully met by the user as noted above, but is also fully met by an entity, organization, enterprise, or other group of users that collectively constitute a "customer." In this regard, we note that PC 20 may operate in a networked environment such as that found in offices, intranets, etc. (Chiloyan, ¶¶ 0031-32). Under this interpretation, peripherals -- and their respective identification numbers -- installed by different individual users in such a networked environment (e.g., users within an office) would be inherently associated with the customer (i.e., that particular office).

For at least these reasons, we will sustain the Examiner's rejection of representative claim 15. Since Appellants have not separately argued the patentability of claims 16, 17, and 20-22, these claims fall with representative claim 15. *See In re Nielson*, 816 F.2d 1567, 1572, 2 USPQ2d 1525, 1528 (Fed. Cir. 1987); *see also* 37 C.F.R. § 41.37(c)(1)(vii).

Representative Claim 18

We will also sustain the Examiner's rejection of representative claim 18. At the outset, we find the Examiner's interpretation of "database" as "a file, table or other repository in which information is stored at some location" is reasonable and, indeed, unrebutted. Further, we agree with the Examiner's analysis regarding the different "databases" that store the (1) identification numbers along with associated configuration information, and (2) drivers respectively (Answer 6-7).

We add that the identifier obtained from the peripheral (i.e., the vendor ID and/or product ID) is used as an index into a remote database to reference the network address related to the peripheral. Using the obtained network address, the driver for the peripheral is then downloaded from the remote device (Chiloyan, ¶¶ 0044-45; abstract).

In our view, the index comprising the identification numbers and its associated storage reasonably meets a "first database" as claimed. Moreover, the associated drivers would inherently be stored in a memory location different from the "first database." Such a distinct memory location, in our view, reasonably constitutes a "second database" as claimed.

For at least these reasons, the Examiner's rejection of representative claim 18 is sustained. Likewise, we will also sustain the Examiner's rejection of claim 23.

CONCLUSIONS OF LAW

Appellants have not established that the Examiner erred in finding that Chiloyan's system associates the identification numbers with the customer as recited in representative claim 15. Moreover, Appellants have not

established that the Examiner erred in finding that Chiloyan's system stores
(1) identification numbers and associated configuration information in a first
database, and (2) associated device drivers in a second database as recited in
representative claim 18.

DECISION

We have sustained the Examiner's rejection with respect to all claims
on appeal. Therefore, the Examiner's decision rejecting claims 15-18 and
20-23 is affirmed.

No time period for taking any subsequent action in connection with
this appeal may be extended under 37 C.F.R. § 1.136(a)(1)(iv).

AFFIRMED

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